

If tangible personal property is transferred incident to sales of service, this will result in either Service Occupation Tax liability or Use Tax liability for the serviceman depending upon his activities. See 86 Ill. Adm. Code 140.101. (This is a GIL.)

June 12, 2006

Dear Xxxxx:

This letter is in response to your letter dated January 27, 2006, in which you request information. The Department issues two types of letter rulings. Private Letter Rulings ("PLRs") are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. Persons seeking PLRs must comply with the procedures for PLRs found in the Department's regulations at 2 Ill. Adm. Code 1200.110. The purpose of a General Information Letter ("GIL") is to direct taxpayers to Department regulations or other sources of information regarding the topic about which they have inquired. A GIL is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120. You may access our website at www.ILTAX.com to review regulations, letter rulings and other types of information relevant to your inquiry.

The nature of your inquiry and the information you have provided require that we respond with a GIL. In your letter you have stated and made inquiry as follows:

The following is enclosed:

1. This letter acts as the detail explanation of our request for refund and explains why our customer, CUSTOMER, is considering the transactions exempt.
2. Copies of invoices
3. Spreadsheet listing invoices, tax paid on each invoice, and amount to be refunded
4. Nexus letter stating that CUSTOMER only has nexus in MD

ABC is a commercial printer with printing facilities in Illinois. From 07/2004 through 04/2005, ABC printed store and office copies and mailers for CUSTOMER ABC taxed all store and office copies and mailers sold to CUSTOMER and delivered to IL.

CUSTOMER has requested that ABC refund the IL tax collected on store and office copies and mailers. CUSTOMER states that they do not have nexus in IL and therefore, not obligated to pay tax in IL.

ABC is filing this refund claim of **\$2,482.25** on CUSTOMER's behalf. The tax represents tax on store and office copies and mailers shipped into IL. This claim is on the basis that CUSTOMER states that they do not have nexus in Illinois.

Due to the volume of amended returns involved, we are requesting that you notify us of your ruling on the taxable or exempt nature of our transactions with CUSTOMER. If upon review of the information provided, the State of Illinois agrees that a refund is due and that these sales to CUSTOMER are exempt, ABC will then file amended returns for all periods affected by this refund claim.

Please call with any questions regarding this matter.

DEPARTMENT'S RESPONSE

We do not have enough information to answer your question. The tax liability of you and your customer will depend on variable circumstances. In the meantime, we hope the following information is helpful.

Service Occupation Tax or Use Tax liability is generally incurred on special order printed materials delivered from Illinois printers to Illinois customers. The Service Occupation Tax is a tax imposed upon servicemen engaged in the business of making sales of service in this State, based on the tangible personal property transferred incident to sales of service. See 35 ILCS 115/3. Under Illinois tax law, the transfer of special order printing materials is a service transaction that may result in either Service Occupation Tax or Use Tax liability for the servicemen, depending upon which tax base the servicemen choose to calculate their liability. For general information, see 86 Ill. Code 140.101 through 140.109 regarding sales of service and Service Occupation Tax.

A serviceman's liability may be calculated in one of four ways: 1. Separately stated selling price of tangible personal property transferred incident to service; 2. 50% of the serviceman's entire bill; 3. Service Occupation Tax on the serviceman's cost price if he is a registered de minimis serviceman; or, 4. Use Tax on the serviceman's cost price if he is a de minimis serviceman not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act.

Using the first method, servicemen may separately state the selling price of each item transferred as a result of the sale price of service. The tax is then calculated on the separately stated selling price of the tangible personal property transferred. If the servicemen do not separately state the selling price of the tangible personal property transferred, they must use 50% of the entire bill to the service customer as the tax base. Both of the above methods provide that in no event may the tax base be less than the serviceman's cost price of the tangible personal property transferred. See 86 Ill. Adm. Code 140.106. These methods result in the customer incurring a Service Use Tax liability. See 86 Ill. Adm. Code 160.101.

The third way servicemen may account for their tax liability only applies to de minimis servicemen who have either chosen to be registered or are required to be registered because they incur Retailers' Occupation Tax liability with respect to a portion of their business. See 86 Ill. Adm. Code 140.109. Servicemen may qualify as de minimis if they determine that the annual aggregate cost price of tangible personal property transferred incident to the sale of service is less than 35% of the total annual gross receipts from service transactions (75% in the case of pharmacists and persons engaged in graphics arts production). Servicemen no longer have the option of determining whether they are de minimis using a transaction by transaction basis. Registered de minimis servicemen are authorized to pay Service Occupation Tax (which includes local taxes) based upon their cost price of tangible personal property transferred incident to the sale of service. Such servicemen should give suppliers resale certificates and remit Service Occupation Tax using the

Service Occupation Tax rates for their locations. This method also results in the customer incurring a Service Use Tax liability.

The final method of determining tax liability may be used by de minimis servicemen that are not otherwise required to be registered under Section 2a of the Retailers' Occupation Tax Act. Such de minimis servicemen handle their tax liability by paying Use Tax to their suppliers. If their suppliers are not registered to collect and remit tax, the servicemen must register, self-assess and remit Use Tax to the Department. The servicemen are considered to be the end-users of the tangible personal property transferred incident to service. Consequently, they are not authorized to collect a "tax" from the service customers. See 86 Ill. Adm. Code 140.108. Under this method the customer incurs no Service Tax liability.

When a serviceman prints materials in Illinois and delivers them in Illinois, tax is owed. Whether or not the customer has nexus in Illinois does not change this. Nexus is a test for whether or not an out-of-State business that delivers goods into Illinois must collect and remit Illinois tax from its customers. That is not the situation here.

If you require additional information, please visit our website at www.ILTAX.com or contact the Department's Taxpayer Information Division at (217) 782-3336. If you are not under audit and you wish to obtain a binding PLR regarding your factual situation, please submit a request conforming to the requirements of 2 Ill. Adm. Code 1200.110 (b).

Very truly yours,

Martha P. Mote
Associate Counsel

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